



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/606,438	06/25/2003	Robert M. Batz	062891.1125	6343

5073 7590 12/17/2007
BAKER BOTTS L.L.P.
2001 ROSS AVENUE
SUITE 600
DALLAS, TX 75201-2980

EXAMINER

COULTER, KENNETH R

ART UNIT	PAPER NUMBER
----------	--------------

2141

NOTIFICATION DATE	DELIVERY MODE
-------------------	---------------

12/17/2007

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ptomail1@bakerbotts.com
glenda.orrantia@bakerbotts.com

Office Action Summary

Application No.

10/606,438

Applicant(s)

BATZ ET AL.

Examiner

Kenneth R. Coulter

Art Unit

2141

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 September 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 101

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. Claims 18 – 22 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Independent claim 18 is directed to software that is not implemented on a computer-readable **storage** medium.

Data structures not claimed as embodied in computer-readable media are descriptive material *per se* and are not statutory because they are not capable of causing functional change in the computer. See, e.g., *Warmerdam*, 33 F.3d at 1361, 31 USPQ2d at 1760 (claim to a data structure *per se* held nonstatutory). Such claimed data structures do not define any structural and functional interrelationships between the data structure and other claimed aspects of the invention which permit the data structure's functionality to be realized. In contrast, a claimed computer-readable medium encoded with a data structure defines structural and functional interrelationships between the data structure and the computer software and hardware components which permit the data structure's functionality to be realized, and is thus statutory.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1 – 22 are rejected under 35 U.S.C. 102(b) as being anticipated by Brendel et al. (U.S. Pat. No. 5,774,660) (World-Wide-Web Server With Delayed Resource-Binding for Resource-Based Load Balancing on a Distributed Resource Multi-Node Network).

4.1 Regarding claim 1, Brendel discloses an apparatus, comprising:

a load balancer operable to receive a packet included within a request that is associated with an end user, the load balancer being operable to communicate the packet to a selected one of a plurality of gateways, the load balancer being operable to build an object that correlates an internet protocol (IP) address associated with the end user to the selected gateway such that the object may be used to direct subsequently received packets associated with the end user to the selected gateway, the subsequently received packets being directed by the load balancer based on the end user IP address information included in the subsequently received packets (Figs. 17, 19; col. 7, lines 14 – 29; col. 16, lines 21 – 33 “The destination IP address is set to the destination servers real IP address by the load balancer so that the destination's NIC address is generated by step 332 and prefixed to the packet.”).

4.2 Per claim 2, Brendel teaches the apparatus of claim 1, wherein an **additional** load balancer may receive the packet and build an additional object that correlates the IP address associated with the end user to the selected gateway such that the additional object may be used to direct subsequently received additional packets associated with the end user to the selected gateway, the subsequently received additional packets being directed by the additional load balancer based on destination information included in the subsequently received additional packets (col. 19, lines 9 – 14).

4.3 Regarding claim 3, Brendel discloses the apparatus of claim 2, wherein the load balancers evaluate communication flows in one direction in order to direct the flows to the selected gateway based on a selected one of source and destination information (Figs. 12, 17, 19; col. 7, lines 14 – 29; col. 13, lines 18 – 32 “several routers, hubs, or switches”; col. 16, lines 21 – 33).

4.4 Per claim 4, Brendel teaches the apparatus of claim 1, wherein the gateway is a selected one of a group of elements consisting of:

- a firewall;
- a switch;
- an intrusion detection element;
- gateway general packet radio service (GPRS) support node (GGSN);
- a client service packet gateway (CSPG);

a packet data serving node (PDSN); and

a Layer-two tunneling protocol network server (LNS) (col. 13, lines 18 – 32

“several routers, hubs, or switches”).

4.5 Regarding claim 5, Brendel discloses the apparatus of claim 1, wherein the load balancer includes a table operable to store the object that correlates the IP address of the end user to the selected gateway (Fig. 11A; col. 12, lines 7 – 24 “session table”).

4.6 Per claim 6, Brendel teaches the apparatus of claim 1, wherein the gateway performs per-host operations based on an identity associated with the end user (Figs. 12, 17, 19; col. 7, lines 14 – 29; col. 13, lines 18 – 32; col. 16, lines 21 – 33).

4.7 Regarding claim 7, Brendel discloses the apparatus of claim 1, wherein the load balancer includes one or more algorithms that may be used in order to determine which of the plurality of gateways is to receive the packet (Figs. 12, 17, 19; col. 7, lines 14 – 29; col. 13, lines 18 – 32 “several routers, hubs, or switches”; col. 16, lines 21 – 33).

4.8 Per claims 8 – 22, the rejection of claims 1 – 7 under 35 USC 102(b) (paragraphs 4.1 – 4.7 above) applies fully.

Response to Arguments

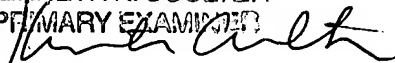
Applicant's arguments with respect to claims 1 – 22 have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kenneth R. Coulter whose telephone number is 571 272-3879. The examiner can normally be reached on M - F, 7:30 am - 4 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rupal Dharia can be reached on 571 272-3880. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

KENNETH R. COULTER
PRIMARY EXAMINER



krc